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Rahmahyani (as wife and defendant of Muhroji bin Muhd Sidik, deceased) v Yamuna Sundari a/p Nagarajoo & Anor and another appeal

B

HIGH COURT (GEORGETOWN) — CIVIL APPEAL NOS PA-11B-12–03 OF 2017 AND PA-11B-13–03 OF 2017
LIM CHONG FONG J
31 JULY 2017

C

Tort — Damages — Road accident — Negligence — Contributory negligence — Deceased collided into defendant's stationary car causing his death — Quantum of damages for loss of dependency

D

These appeals were brought by both parties against the decision of magistrate arising from a road accident. The appellant in the first appeal and respondent in the second appeal ('the plaintiff') was the wife of the deceased who collided into a car whilst riding his motorcycle. Whereas the respondents in the first appeal and appellants in the second appeal ('the defendants') were the driver and registered owner of the car which the deceased collided into. On 20 June 2014 at around 12.45pm, the first defendant had stopped the car on the left most lane of the Penang Bridge heading towards Butterworth as the car had a punctured tyre. The deceased had collided straight into the defendant's car whilst riding his motorcycle. Because of the collision, he suffered injuries which resulted in his death. The plaintiff then sued the defendants in negligence and claimed for both special and general damages. The magistrate had found the defendants and plaintiff liable for the accident in the ratio of 80:20 and the plaintiff was awarded damages of RM30,000 for loss of dependency, RM10,000 for bereavement and RM2,000 for funeral expenses. Both parties were dissatisfied with the judgment of the magistrate and appealed to the High Court.

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Held, maintaining finding of liability and varying quantum of damages for loss of dependency from RM30,000 to RM24,000:

(1) The learned magistrate's findings on liability were maintained as the magistrate did not commit any appealable error. The first defendant was able to drive the car from the side of the road to the emergency bay 600 metres away even with a flat tyre. The first defendant ought to have done so as the safety of other users were of paramount concern. The magistrate was correct in finding that the plaintiff was contributorily negligent by riding his motorcycle at high speed, without taking adequate care (see paras 13 & 16–17).

I

(2) There was documentary evidence of the deceased's average drawn salary for the past three months was RM818 per month. The multiplier was adjusted based on deductions made for the deceased's own personal work expenses which included fuel and meals at work. The multiplier was adjusted by deducting RM425 from RM818 which equaled to RM393 per month. The compensation was calculated based on RM393 per month x 60 months which equaled RM23,580 which was rounded to RM24,000 (see para 19).

[Bahasa Malaysia summary

Rayuan-rayuan ini adalah dibawa oleh kedua-dua pihak terhadap keputusan majistret berbangkit daripada kemalangan jalanraya. Perayu dalam rayuan pertama dan responden dalam rayuan kedua ('plaintif') adalah isteri si mati yang melanggar kereta semasa menunggang motosikalnya. Sementara responden-responden dalam rayuan pertama dan perayu-perayu dalam rayuan kedua ('defendan-defendan') adalah pemandu dan pemilik berdaftar kereta yang dilanggar oleh si mati. Pada 20 Jun 2014 lebih kurang pukul 12.45 tengah hari, defendan pertama telah memberhentikan kereta di sebelah lorong kiri Jambatan Pulau Pinang menghala ke arah Butterworth kerana tayar kereta tersebut pancit. Si mati melanggar terus kereta defendan semasa menunggang motosikalnya. Akibat pelanggaran tersebut, dia mengalami kecederaan yang mengakibatkan kematiannya. Plaintif kemudiannya menyaman defendan-defendan dalam kecuaian dan menuntut untuk ganti rugi khas dan ganti rugi am. Majistret telah mendapati defendan-defendan dan plaintif bertanggungjawab bagi kemalangan dalam nisbah 80:20 dan plaintiff diawardkan ganti rugi sebanyak RM30,000 untuk kehilangan pergantungan, RM10,000 bagi kehilangan dan RM2,000 untuk perbelanjaan kematian. Kedua-dua pihak tidak puas hati dengan penghakiman majistret dan merayu kepada Mahkamah Tinggi.

Diputuskan, mengekalkan dapatan liabiliti dan mengubah kuantum ganti rugi untuk kehilangan pergantungan daripada RM30,000 kepada RM24,000:

(1) Dapatan majistret yang bijaksana ke atas liabiliti dikekalkan kerana majistret tidak melakukan kesilapan yang boleh dirayu. Defendan pertama boleh memandu kereta daripada tepi jalan ke kawasan kecemasan 600 meter dari situ dengan tayar yang pancit. Defendan pertama patut melakukannya kerana keselamatan pengguna-pengguna yang lain menjadi kebimbangan utama. Majistret adalah betul dalam mendapati bahawa plaintif adalah kecuaian sertaan apabila menunggang motosikalnya dengan kelajuan yang tinggi tanpa mengambil perhatian yang mencukupi (lihat perenggan 13 & 16–17).

(2) Terdapat keterangan dokumentar gaji purata yang diperolehi oleh si mati untuk tiga bulan lepas sebanyak RM818 sebulan. Pendarab diselaraskan berdasarkan atas penolakan yang dibuat untuk perbelanjaan kerja

peribadi si mati yang termasuk minyak dan makanan di tempat kerja. Pendarab diselaraskan dengan menolak RM425 daripada RM818 yang mana bersamaan kepada RM393 sebulan. Pampasan dikira berdasarkan atas RM393 sebulan x 60 bulan yang bersamaan RM23,580 yang dibundarkan kepada RM24,000 (lihat perenggan 19).]

Notes

For cases on road accident, see 12(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 347–369.

Cases referred to

Che Pah bte Itam v Chang Bek Lee [1998] MLJU 411; [1998] 4 CLJ 517, HC (refd)

Ng Chul Sia v Maimon bt Ali [1983] 1 MLJ 110 (refd)

Rasidin bin Partorjo v Frederick Kiai [1976] 2 MLJ 214; [1976] 1 LNS 123, FC (refd)

Rebecca Mathew & Ors v Syarikat Serbaguna Gema Wong Siong Bhd & Anor [1990] 1 MLJ 443, HC (refd)

Renhome Bricks Factory Sdn Bhd & Anor v Watah Umpin [2009] 9 CLJ 494, HC (refd)

Wong Thin Yit v Mohamed Ali [1971] 2 MLJ 175, FC (refd)

Legislation referred to

Road Traffic Rules 1959 r 17

Mohamed Firdaus bin M Farouk (Sykt P Subbaiyah) in Civil Appeal No PA-11B-12–03 of 2017 for the appellant.

P Ramanathan (VP Nathan & Partners) in Civil Appeal No PA-11B-13–03 of 2017 for the appellant.

Mohamed Firdaus bin M Farouk (Sykt P Subbaiyah) in Civil Appeal No PA-11B-13–03 of 2017 for the respondent.

P Ramanathan (VP Nathan & Partners) in Civil Appeal No PA-11B-12–03 of 2017 for the respondents.

Lim Chong Fong J:

INTRODUCTION

[1] These are appeals brought by both parties against the trial judgment of magistrate arising from a road accident.

[2] The appellant in Civil Appeal No PA-11B-12–03 of 2017 ('first appeal') and respondent in Civil Appeal No PA-11B-13–03 of 2017 ('second appeal') is the plaintiff in the magistrate court Suit No A73KJ-500–05 of 2015 ('suit'). She is the wife of Muhroji bin Muhd Sidik deceased ('the deceased')

who was involved in the road accident colliding onto a car whilst riding motorcycle bearing registration No PGP 6782.

[3] The respondents in first appeal and the appellants in the second appeal are the defendants in the suit. The first defendant and second defendant were respectively the driver and registered owner of the car bearing registration No PKY 394 against which the deceased collided.

[4] For purposes of this appeal, I will refer the parties as they were designated in the suit.

PRELIMINARY AND BRIEF FACTS

[5] On 20 June 2014 at around 12.45pm in the clear afternoon, the car driven by the first defendant suffered a punctured tyre whilst travelling on the Penang Bridge towards Butterworth. The first defendant stopped the car on the left most lane to await for assistance.

[6] The deceased whilst riding his motorcycle collided straight onto the car. He later succumbed to the injuries sustained because of the collision and died.

[7] In the suit, the plaintiff sued the defendants in negligence and relied on the doctrine of *res ipsa loquitor*. She claimed for both special and general damages particularly loss of dependency.

[8] After trial of the suit, the learned magistrate found the defendants and the plaintiff liable for the accident in the ratio of 80:20% and awarded the plaintiff damages of RM30,000 for loss of dependency, RM10,000 for bereavement and RM2,000 for funeral expenses (all assessed based on 100% liability) including interests and costs.

[9] Both parties were dissatisfied with the judgment of the learned magistrate and appealed to the High Court. The appeal came before me for hearing on 18 July 2017.

[10] After having read the records of appeal and heard oral arguments of counsel, I maintained the findings of liability of the learned magistrate but reduced the quantum of damages awarded for loss of dependency to RM24,000 with no order as to costs for both appeals.

[11] I now furnish my grounds of judgment in support of my decision.

A CONTENTIONS AND FINDINGS

[12] In respect of liability, the learned magistrate in her clear and succinct judgment found as testified by the investigating officer that the first defendant merely sat in the stopped car to call her husband with the double signal lights B turned on instead of driving it to the emergency parking bay about 600 metres ahead. The first defendant did not place a warning triangle behind the car as well. Consequently, the learned magistrate found the defendants liable for negligence. She said as follows:

C 10. Mahkamah menerima keterangan SP1 sebagai keterangan bagaimana kemalangan berlaku sepertimana dalam kes *Henry Trading Co Ltd v Harun* [1996] 1 LNS 65 yang dirujuk oleh plaintif di mana —

> ... in deciding what the truth of the matter was, I feel that the proper thing to consider is not so much what the plaintiff/respondent said or what the D defendant/appellant said but what the sergeant, whom I consider to be an independent witness No 2 for the plaintiff had to say in this matter.

[13] At the same time, the learned magistrate found the plaintiff was contributorily negligent by riding his motorcycle at high speed without taking E adequate care as required of r 17 of the Road Traffic Rules 1959. In other words, he was in breach of r 17. According to the learned magistrate, it was evident from the nature of the damage seen on both vehicles notwithstanding that there was no direct witness called by the plaintiff to testify thereto. She said as follows:

F 22. Mustahil plaintif tidak dapat melihat motokar defendan pertama itu dari jarak jauh yang munasabah di mana jalan adalah lurus dan mengawal motosikalnya untuk mengelakkan sebarang kemalangan sekiranya simati menunggang motosikal dengan kelajuan yang munasabah dan lebih berhati.

G **[14]** In this appeal, the plaintiff urged me to adjust the findings on liability to 100:0% whilst the defendants urged me to adjust it to 50:50% instead.

[15] Generally, an appellate court will not disturb the findings of the trial H judge especially if they are on findings of fact. Wan Suleiman FJ said as follows in the Federal Court case of *Rasidin bin Partorjo v Frederick Kiai* [1976] 2 MLJ 214; [1976] 1 LNS 123:

> I am of the opinion that the appeal against the judge's finding that both motorcyclists were to blame should be dismissed. The evidence in support of each I party's version was purely oral. It cannot be tested by independent evidence such as to be found in a police sketch plan (which by the time of the trial had been destroyed). The learned trial judge preferred the plaintiff's version to that of the defendant's, and in these circumstances, it would be wrong of us who have not seen or heard the witnesses, to substitute our own finding for that of the learned trial judge.

[16] After careful consideration, I hold that the learned magistrate did not commit any appealable error. I am nonetheless mindful that the defendants relied heavily on the honoured Federal Court case of *Wong Thin Yit v Mohamed Ali* [1971] 2 MLJ 175 and high court cases of *Ng Chul Sia v Maimon bt Ali* [1983] 1 MLJ 110 and *Che Pah bte Itam v Chang Bek Lee* [1998] MLJU 411; [1998] 4 CLJ 517 but their facts are dissimilar. The first defendant parked the car at the left most lane of 1.4 meters in width which is effectively the road shoulder. The other outer lanes are 3.5 meters in width. I am of the view that the first defendant was still able to slowly drive the car to the emergency bay 600 metres away notwithstanding with a punctured tyre. She ought to have done so because the safety of other road users must be of paramount concern. It might perhaps be different if the car suffered engine failure and became immobilised. I have also reviewed the photographs of the damaged vehicles and concurred with the findings of learned magistrate that the plaintiff was indeed speeding.

[17] I therefore maintained the learned magistrate's findings on liability.

[18] As for the quantum of damages, the only dispute pertains to the loss of dependency claim. The learned magistrate awarded RM30,000 by stating the following:

> 29. Mahkamah ini bersetuju dengan otoriti-otoriti terdahulu yang memutuskan walaupun tiada bukti dokumen, keterangan lisan boleh diterima sebagai bukti simati ada mempunyai pekerjaan atau pendapatan lain. Walaupun begitu, Mahkamah akan membenarkan suatu jumlah yang munasabah dan bukannya jumlah yang dituntut dalam penyata tuntutan.
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> 30. Mahkamah turut merujuk kepada kes *Mat Jusoh Daud v Syarikat Seberang Takir Sdn Bhd* [1982] 2 MLJ 71; [1982] CLJ 366; [1982] CLJ Rep 562 —
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> > the trial judge was not prohibited from awarding a fair and reasonable sum as compensation after taking into account the facts of the case, genuineness of the claim inclusive the quantum as claimed.

The learned magistrate hence calculated reasonable compensation based on RM500/month x 60 months. The deceased was 45 years of age at the time of death. The multiplicand was computed based on 55 years–45 years divided by two which equalled to five years or 60 months. The multiplier of RM500/month is an amount the learned magistrate deemed fair.

[19] The defendants however pointed out that there was evidence of the deceased's earnings by his employer at the trial. The multiplier used by the learned magistrate is thus inappropriate and arbitrary. The deceased was a general worker at the Squash Academy of Penang. He did not draw a fixed salary. There was documentary evidence that his average three months last drawn salary was RM818/month. It is nonetheless trite that there must be a

deduction made for his own personal living expenses at work: see *Renhome Bricks Factory Sdn Bhd & Anor v Watah Umpin* [2009] 9 CLJ 494 and *Rebecca Mathew & Ors v Syarikat Serbaguna Gema Wong Siong Bhd & Anor* [1990] 1 MLJ 443. In this regard, the parties agreed on my estimate of RM50 per week for fuel expenses totalling to RM200 per month, RM2.50 per day for breakfast totalling to RM75 per month and RM5 per day for lunch totalling to RM150 per month. The total deduction added to RM425 per month.

The multiplier was hence adjusted by deducting RM425 from RM818 equalling to RM393 per month. Thus the compensation ought to be RM393/month x 60 months which equalled to RM23,580. I rounded it to RM24,000.

[20] Consequently, I varied the award of compensation for loss of dependency from RM30,000 to RM24,000.

CONCLUSION

[21] It is for the foregoing reasons that I decided as so ordered.

Finding of liability maintained; damages for loss of dependency varied from RM30,000 to RM24,000.

Reported by Fatin Mohd Ismail